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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,816	11/20/2001	Michael Kreindel	KREINDEL 3	8834

7590 01/24/2003

BROWDY AND NEIMARK, P.L.L.C.
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 Washington, DC 20001

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,816

Applicant(s)

KREINDEL, MICHAEL

Examiner

Roy D. Gibson

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-11 and 13-24 is/are rejected.
- 7) ☐ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: in the Specification in line 12, element 706 should be changed to 703; in lines, 26 and 28, element 706 should be changed to 712. Appropriate correction is required.

Drawings

The drawings are objected to because in Figure 1, element number 706 should be 712 (cooling system). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "voltage pulses" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "electrode pairs" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5-11, 13-14 and 16-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Stern (6,413,255).

As to claims 1 and 11, Stern discloses a system and its method of selective thermal treatment of skin irregularities comprising:

one or more RF electrodes (314) adapted to apply RF energy to the skin; and
a RF pulse generator configured to generate pulses of current in the RF range, the pulses having a duration of tens of milliseconds or 100ms (within the range of 2-500ms and col. 15, line 41-col. 17, line 18 and col. 28, lines 9-56).

As to claims 3 and 13-14, Stern further discloses a cooling unit (Figure 16 or 17) adapted to cool the skin (col. 12, lines 1-58).

As to claims 5 and 16, Stern further discloses an impedance monitor with a display for measuring an impedance across one or more RF electrodes (col. 28, lines 9-56).

As to claims 6-8 and 17-19, Stern further discloses a processor (394) configured to measure sequential impedance values of the skin and to determine one or more

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parameters of the RF energy based on or more impedance measurements, wherein one of the parameters is power of the RF energy (col. 29, line 29-col. 30, line 11).

As to claims 9-10, Stern further discloses the microprocessor is programmable (comprises input means for determining one or more parameters of the RF energy and col. 29, line 21-40).

As to claim 20 Stern further discloses the RF frequency is about 300 kHz to about 6 MHz (col. 6, lines 1-12 and col. 10, lines 55-64).

As to claim 21, Stern further discloses an RF output power of about 100 Watts (within the range of 5-500 Watts and col. 16, lines 49-54).

As to claim 22, Stern further discloses a pulse sequence of tens of milliseconds (assume 40 msec of cooling followed by 40 msec of heating followed by 40 msec OFF and then repeated) or a repetition rate of 120 msec (within the range of 0.1 –10 pulses/sec and col. 17, lines 5-13).

As to claim 23, Stern further discloses hydrating the skin (col. 26, lines 2-14).

As to claim 24, Stern further discloses the skin irregularity is a wrinkle or hair follicle (col. 2, lines 40-47).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-4, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knowlton (6,350,276).

As to claims 1 and 11, Knowlton discloses a system and its method of selective thermal treatment of skin irregularities comprising:

one or more RF electrodes (18) adapted to apply RF energy to the skin; and
a RF pulse generator configured to generate pulses of current in the RF range, but fails to disclose the pulse duration (Figure 2b and col. 6, lines 5-27). But, the examiner maintains that the broad range of pulse duration of 2-500 msec suggests the non-criticality of this parameter and, therefore, that it would have been obvious to one of ordinary skill in the art to select a pulse duration in this range as required by the treatment parameters, such as the area, surface condition, etc.

As to claims 3- 4 and 15, Knowlton discloses a cooling unit adapted to cool the skin and that the cooling unit could be a Peltier or thermoelectric cooler (col. 5, line 52-59).

Allowable Subject Matter

Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

C nclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sharkey (6,383,184) discloses a RF device for resurfacing skin, but lacks pulsed energy; and Rauch et al. (5,584,863) disclose a pulsed RF electrotherapeutic system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 703-308-3520. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

January 17, 2003


Roy Gibson
Primary Examiner
Art Unit 3739